

REMARKS

Rejections Based On 35 U.S.C. § 103

Each of the claims 1 through 36 pending in the application, stand rejected pursuant to 35 U.S.C. § 103(a) as obvious over Ruck (U. S. Patent Application Publication No. 2002/0019248 A1) for a Communications Device, in view of Takasu, et al. (U. S. Patent No. 4,773,127) for a Unit Of Arrayed Light Emitting Diodes.

By setting forth 35 U.S.C. § 103(a) as the basis for all of the obviousness rejections set forth in the Office Action, it is acknowledged by the Examiner that the invention claimed in the Application “is not identically disclosed or described as set forth in section 102 of this title.” Rather, the rejections of the claims are based upon combining the teachings of the primary reference, the Ruck patent application, with the teachings of the secondary reference, the Takasu patent.

37 CFR § 1.131(a) provides, in applicable part, that “when any claim of an application . . . is rejected, the inventor of the subject matter of the rejected claim . . . may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.”

The Primary Reference

The Ruck reference is the primary reference relied upon by the Examiner in the rejection of all of the claims (claims 1 through 36) in the Application, under 35 U.S.C. § 103.

The Ruck reference is a United States patent application which was filed on June 22, 2001 and published on February 14, 2002.

37 CFR § 1.131(a) provides that the effective date of a United States patent application

is the earlier of the publication date or the date that it is effective as a reference under 35 U.S.C. 102(e). Under 35 U.S.C. 102(e), the Ruck patent application is effective as a reference on its filing date. As such date predates the publication date, the effective date of the Ruck reference is the filing date of the U. S. patent application [see, 37 CFR § 1.131, MPEP §§ 706.02 and 715].

Accordingly, the effective date of the Ruck reference is June 22, 2001, and such is the reference date to be overcome [37 CFR § 1.131, MPEP § 715].

Filed herewith, pursuant to 37 CFR § 1.131 (and MPEP § 715, *et seq.*), is Applicants' sworn Declaration Under 37 CFR § 1.131, submitted to overcome the prior art rejection based upon the Ruck reference.

Such Declaration establishes the completion of Applicants' invention, as described and claimed in claims 1 through 36 in the Application, in this country, a NAFTA country, or a WTO country, prior to June 22, 2001, the effective date of the Ruck reference. The Ruck reference is thereby eliminated as prior art with respect to the Application.

Accordingly, the Ruck reference need not be addressed in a substantive manner as it does not constitute prior art and may not be now used as the basis for rejection of the claims pending in the Application.

MPEP § 715.02 provides that an applicant "may overcome a 35 U.S.C. § 103 rejection based on a combination of references by showing completion of the invention by applicant prior to the effective date of any of the references" and that an "applicant need not antedate the reference with the earliest filing date."

Because Applicants have eliminated the Ruck reference as prior art, Applicants have overcome all of the rejections in the Office Action.

The Secondary Reference

Although the Takasu reference need not be addressed substantively, Applicants respectfully submit that there is no teaching or suggestion in Takasu that would motivate one of ordinary skill in the art to produce the invention claimed in the Application.

The Takasu, et al., patent relates to a unit of a large number of light emitting diode arrays on a substrate to be utilized in an optical printer head, whereby characters can be printed with good quality by light emission of the array (col. 1, lns. 8-10; col. 2, lns. 40-45). There is no showing that the teachings of Takasu be modified to produce an apparatus which results in the illumination of a light emitting device entirely coincident with the frequency, amplitude, and duration of the ringing signal of a portable communications device, such as a cellular telephone.

Prior Art Of Record Not Relied Upon By Examiner

The Examiner has also made of record certain prior art, not relied upon in the rejection of the claims, but considered by the Examiner to be pertinent to the Applicants' disclosure.

Although such references do not form the basis of any of the obviousness rejections set forth in the Office Action, Applicants address these references briefly.

The Patent Application in the name of Yamazaki (US 2002/0034930 A1) for Electronic Device And Method Of Usage Of Same was filed September 11, 2001. As discussed above, the filing date of the application would be the effective date of the prior art reference. As the effective date the Yamazaki application is later than the Ruck reference, the Yamazaki application is eliminated as a potential prior art reference with the sworn Declaration of Applicants.

Likewise, the Patent Application filed in the name of Kela, et al., (US 2003/0054854 A1) is also eliminated as a potential prior art reference. The Kela, et al., application has a filing date, and

therefore an effective date, of September 17, 2001. This application cannot be considered prior art in the instant application in light of the sworn Declaration of Applicants.

U. S. Patent No. 6,600,662, issued to Emmert, et al., is cited as disclosing a “vibrator assembly” which includes a motor to provide “a silent alert in lieu of or in addition to an audible ringer tone.” It is not understood why this reference was made of record as the silent alert, which is a vibration, is not a feature of the claimed invention.

U. S. Patent No. 5,555,550, granted to Kaschke, is made of record as disclosing a keypad apparatus with integral display indicator bars, which provides “input to a device while displaying the status of the device on the display indicator bars.” The Kaschke patent teaches the integration of light bars used for the status lights on a cellular telephone with the data input keypad. However, Applicant respectfully submits that Kaschke does not disclose the features of the claimed invention, which result in the illumination of light emitting devices entirely coincident with the frequency, amplitude and duration of the ringing signal.

Summary

The evidence submitted with this correspondence, set forth in the sworn Declaration of Applicants, establishes the completion of Applicants’ invention, as described and claimed in claims 1 through 36 in the Application, in this country, a NAFTA country, or a WTO country, prior to June 22, 2001, the effective date of the Ruck reference.

The prior art rejection based upon a combination of the Ruck reference with a secondary reference has therefore been overcome. As each of the claims 1 through 36, pending in the application, were rejected pursuant to 35 U.S.C. § 103(a), the elimination of any reference overcomes the rejection.

It is therefore felt that the Examiner is fully justified in withdrawing the rejection and allowing all of the claims pending in the application, to wit, claims 1 through 36. Such favorable action on the application is earnestly requested.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Catherine Ashley Straight", written over a horizontal line.

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